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CONFLICTING JURISDICTION IN ADMIRALTY OVER FOREIGN VESSELS

By James D. Derwell, Jr., of the Connecticut Bar.

As a broad proposition in Admiralty one may libel a vessel that has committed a tort wherever he finds her. To this proposition, however, interesting exceptions and questions are frequently advanced. The exceptions to the rule almost invariably arise in cases where the one seeking to libel is not a citizen of the country whose forum he invokes and the vessel also belongs to some other country. In such cases it is largely discretionary with the courts whether they will entertain jurisdiction.

The question was but recently before the United States Court in a case where a woman, a subject of Austria-Hungary, filed a libel against two steamers, one an English vessel, the other a German vessel (she being a passenger on the German vessel), because of injuries she received when the vessels were in collision in the harbor of Cherbourg, in the Republic of France. Exceptions to the jurisdiction were raised by the owners of the German vessel because the libellant was not a citizen of the United States and because both vessels were foreign. The Court entertained jurisdiction, as obviously it should have; for if it had not, the libellant might have been practically denied a right of action, as it would be very uncertain if she went back to her own country in Austria-Hungary if she would be successful in getting jurisdiction against these two steamers, or should she go to Germany or England, it is likewise doubtful.

There is a class of cases where the Federal Courts will not take jurisdiction, which usually relates to a dispute in regard to wages or some ill-treatment of a seaman by the captain or officers of the vessel, the vessel and crew, of course, being foreign to the United States. These cases are almost always covered by treaty.

"Consul-generals, consuls, vice-consuls, or consular agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall have the exclusive power to take cognizance of and to determine differences of every kind which may arise, either at sea or in port, between the captains, officers and crews, and especially in reference to wages and the execution of mutual contracts. Neither any court or authority shall, on any pretext, interfere in these differences, except in cases where the differences on board ships are of a nature to disturb the peace and public order in port, or on shore, or when persons

other than the officers and crew of the vessel are parties to the disturbances.”¹

If the seaman, however, should be a citizen of the United States, such treaty obligations would probably not deny to such seaman a right to file a libel for his wages.²

Neither do they prohibit the Courts of the United States from taking jurisdiction of a libel filed by a foreign seaman for injury at sea on a foreign steamer, for such treaties merely provide for settling any differences between the captain, officers and any member of the crew, and obviously do not cover an action for negligence, as no such action is specified in the treaty and must be construed to cover only disputes relative to the management of the vessel.³

However, the case which is the subject of this article, is not one where the courts have been reluctant to take jurisdiction, but presents a set of facts of which the courts have emphatically said that they would take jurisdiction. The exceptions to the rule are the ones just mentioned.

The question here presented has nothing whatever to do with controversies between master and seamen, but is a case where a passenger was injured because of a collision between two foreign steamers. They were all in the jurisdiction of the United States Court at the time the libel was filed, so that this is not a case on the border line as to whether or not the Federal Court should take jurisdiction.

As was said by Judge Deady, sitting in the District Court in Oregon, who had the same state of facts in a case before him:

“The parties cannot be remitted to a home forum, for, being subjects of different governments, there is no such tribunal. The forum which is common to them both by the *jus gentium* is any court of admiralty within the reach of whose process they may both be found.”⁴

In *The Belgenland*,⁵ which was a case growing out of a collision between this steamer, which was a Belgian steamer, and a Norwegian bark, exception to the jurisdiction being raised, Mr. Justice Bradley said upon this question:

“But, although the courts will use a discretion about assuming jurisdiction of controversies between foreigners in cases arising beyond the territorial jurisdiction of the country to which the courts belong, yet where such controversies are *communis juris*,

¹ *The Bound Brook*, 146 Fed., 160.

² *The Neck*, 138 Fed., 144.

³ *The Baker*, 157 Fed., 485.

⁴ *Bernhard v. Greene*, 3 Sawyer, 230, 235.

⁵ 144 U. S., 355.

that is, where they arise under the common law of nations, special grounds should appear to induce the court to deny its aid to a foreign suitor when it has jurisdiction of the ship or party charged. The existence of jurisdiction in all such cases is beyond dispute; the only question will be, whether it is expedient to exercise it."⁶

In a case growing out of a bottomry bond, Mr. Justice Story held that although the contract was made between subjects of the Sublime Porte the Court of the United States would take jurisdiction and wherever there is a maritime lien on a ship, an Admiralty Court can take jurisdiction on the principle of the civil law, that in proceedings *in rem* in the proper forum is the *locus rei sitae*. He also said:

"With reference, therefore, to what may be deemed the public law of Europe, a proceeding in rem may well be maintained in our courts where the property of a foreigner is within our jurisdiction. Nor am I able to perceive how the exercise of such judicial authority clashes with any principle of public policy."

This case, as has been explained, grew out of a dispute over a bottomry bond and the objection was raised that the contract might have been entered into in reference to the foreign law, and Mr. Justice Story said to this:

"In respect to maritime contracts, there is still less reason to decline the jurisdiction, for in almost all civilized countries these are in general substantially governed by the same rules."⁷

Therefore, unless some special circumstances exist to show that justice would be better served by declining it, Federal Courts of this country, as well as Courts of other countries, will take jurisdiction, in Admiralty cases, of suits between foreigners where the parties are within the jurisdiction of the Court.⁸

In the case of the Kaiser Wilhelm der Grosse and the Orinoco,⁹ the question of *res judicata* which was presented was almost as interesting as the one on jurisdiction. The liability for this collision, which caused the injuries to the libellant, had been decided by the English High Court of Justice against the Kaiser Wilhelm and in favor of the Orinoco, and the United States Court adopted the English ruling as to the liability between the vessels for the collision, and released the Orinoco. James D. Dewell, Jr.

⁶ Pages 255-256.

⁷ *The Jerusalem*, 2 Gall., 191.

⁸ *The Jupiter*, 1 Ben., 536; *The Steamship Russia*, 3 Ben., 471; *The Maggie Hammond*, 9 Wall., 435; *Mason v. Blaireau*, 2 Cranch, 240; *The Noddleburn*, 30 Fed., 142; *The Two Friends*, 1 Ch. Rob., 371-378; *The La Bourgogne*, 210 U. S., 95; Vol. 2, *Parsons on Shipping and Admiralty*, 226; *The Kaiser Wilhelm der Grosse—The Orinoco*, 175 Fed., 216.

⁹ *Supra*.